IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2292 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HITESH VISHNUBHAI PANDYA - Appellant(s)
Versus
RAJESHKUMAR MANIBHAI PATEL & 1 - Defendant(s)

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Appearance :
MR BHARAT JANI for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 04/10/2006

ORAL JUDGMENT

1. The original claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1994 to claim enhancement of the amount of compensation awarded by the MACT [No. 3] at Ahmedabad by its judgment dated

27th September, 1999 made in MACP No. 4 of 1992 (3). The original petition was preferred by the natural guardian and parents of the present appellant i.e., Vishnubhai Babubhai Pandya. Upon attaining majority the appellant himself has stepped into the shoes of his parents and now he is prosecuting this appeal. On the date of the accident which took place on 3rd January, 1991, the appellant who was then a minor, aged about 10 years, was playing with his friends, near his house situated at the end of their residential chawl. At that time, respondent no. 1 drove his vehicle namely scooter bearing registration no. GJ-1-F-679 in a rash and negligent manner and he knocked down the appellant by the front portion of his scooter. As a result of the impact the appellant suffered grievous injuries and he was immediately removed to the L.G. Hospital. He was kept as indoor patient for about five days. He was twice operated upon since, he had sustained fracture of shaft tibia fibula on the right side. It also appears that even after discharge from the hospital, he was required to take the treatment for six to seven months. He also suffered injury on the face and his teeth got upset and mounted on one another. After the operation, the fractured limb was kept in the plaster cast, which was changed at the end of one month. It is the say of the appellant that due to the

injury to his jaw, he was not able to drink cold water, nor he was able to eat any hard food. He also found it difficult to perform his normal activities. In view of the same, the parents of the appellant preferred petition under the provisions of Motor Vehicles Act, to obtain compensation of Rs.75,000=00. It was averred that the appellant had sustained injuries solely on account of the negligence of respondent no. 1. It was also averred that since the vehicle was insured with respondent no. 2, it was liable to satisfy the award. The Tribunal taking into consideration various aspects, ultimately awarded a sum of Rs.25,400=00. The Tribunal also directed that on the loss of future income that was determined by the Tribunal, no interest should be awarded.

2. The appellant is not satisfied with the quantum of compensation awarded by the Tribunal, hence has approached this Court to claim additional sum of Rs.20,000=00. According to the appellant, the award made by the Tribunal is on lower side and it is required to be enhanced on various counts.

3. So far as the aspect of future loss of income is concerned, the Tribunal did not have any difficulty to decide this issue because respondent no. 1 has admitted

the involvement of his scooter, the offending vehicle, in the accident. He also pleaded guilty before the Criminal Court and these facts have been brought on record on behalf of the respondents. Hence on the count of negligence of respondent no. 1, I do not find any error having been committed by the Tribunal and finding of the Tribunal on this issue is proper.

4. The grievance of the appellant is inadequacy of the compensation. According to him, the Tribunal ought to have granted some compensation under the head of loss of future income, medical expenses for the treatment and pain, shock and suffering.

5. I have heard Mr. B.G. Jani learned advocate for the appellant. The respondents though served have not remained present either in person or through their advocate. I have also perused the record and proceedings of the case. The submission of Mr. Jani is that on the whole, the award made by the Tribunal is very conservative and the amount is required to be enhanced. According to him, under the heads of pain, shock and suffering, loss of future income etc., the Tribunal has given less amount, which is required to be enhanced.

6. So far as the aspect of pain, shock and suffering is concerned, the Tribunal has awarded Rs.5,000=00. The appellant admittedly sustained fracture of shaft tibia fibula on the right side. He was hospitalized and kept as indoor patient for five days. During the treatment, twice he was operated upon. Three times fracture cast was changed. Even after discharge from the hospital for about six to seven months he was required to go to hospital to obtain necessary treatment. Considering the aforesaid aspects, there is no doubt in my mind that the Tribunal has awarded less amount under the head of pain, shock and suffering. The evidence is that the appellant had also received injury on his face. He had difficulty to drink cold water and he cannot eat hard food substance. His teeth were mounted upon each other. He also suffered permanent disability, which is assessed at 10%. When this is the suffering the appellant has undergone, obviously, the amount of compensation of Rs.5,000=00 for pain, shock and suffering is quite on lower side and it is required to be doubled by granting additional sum of Rs.5,000=00 on that count.

7. The next question that is required to be considered is whether the compensation awarded for future loss of income is proper. The Tribunal has fixed the

notional income of the injured child at Rs.800=00 per month i.e., Rs.9,600=00 per annum. The Tribunal has applied multiplier of 15 which brings the figure to Rs.1,44,000=00. The disability as per the medical certificate at Exh. 44 is 17%. However, the same has been reduced to 10% with the consent of the appellant. Therefore, the Tribunal has taken disability of 10% and determined the future loss of income at Rs.14,400=00 Mr. Jani, has submitted that the notional income fixed by the Tribunal is on very lower side and it has to be increased to Rs.1,500=00 per month. However, Mr. Jani's submission cannot be accepted. The Division Bench of this Court in the case of **Kantibhai Valabhai Patel & Ors., v. Minor Pravin Nathubhai, reported in A.I.R., Gujarat 130**, wherein a boy aged 7 years suffered serious injuries resulting into 70% disability. The Tribunal assessed future loss of income at Rs.1,000=00 per month and applied multiplier of 16. Thus, assessing pecuniary loss at Rs.1,34,400=00. However, in appeal before the Division Bench, the said finding of the Tribunal was challenged and the Division Bench accepted the contention on behalf of the appellant of that case and reduced future loss of income from Rs.1,34,400=00 to Rs.80,000=00. Thus, the notional income of Rs.1,000=00 per month has been considered to be on higher side and it has been reduced

by the Division Bench. In view of the same, the contention of Mr. Jani is required to be rejected.

8. So far as the medical expenses are concerned, the Tribunal has awarded Rs.1,000=00 only and to that there is serious grievance made by Mr. Jani. The Tribunal appears to have mainly relied on the fact that bills of Rs.800=00 only were produced by the appellant and, therefore, the Tribunal concluded that the appellant is entitled to receive a sum of Rs.1,000=00 only for medical treatment. The grievance of Mr. Jani is justified. The Tribunal has completely overlooked the fact that the appellant who had sustained fracture of shaft tibia fibula on the right side was hospitalized for five days as indoor patient. Two operations were performed on him. On three occasions plaster cast was changed. Naturally all this would not have cost the appellant Rs.800=00 only. Merely because he was able to produce bills for medicines etc., of the value of Rs.800=00, it cannot be said that he spent only Rs.800=00 for treatment. When there is clear evidence on this aspect, the Tribunal ought to have taken those facts into consideration and then assessed the compensation payable under this head. Considering the above factors, in my opinion, the appellant deserves to be awarded additional sum of

Rs.7,000=00 on this count. Apart from this there is also evidence that for about six to seven months the appellant was required to take follow up treatment. All this would not have been available to the appellant for a meager amount of Rs.800=00 per month and a substantial amount must have been spent by the appellant for obtaining the treatment. In view of the same, additional sum of Rs.7,000=00 is required to be awarded to the appellant on this count. Thus, the appellant is entitled to receive additional sum of Rs. 14,000=00.

9. Mr. Jani has also assailed the award on the ground that for future loss of income the Tribunal has not awarded any interest. This is against the provisions of law. Section 171 of the Motor Vehicles Act, reads as under :-

> **Section 171 - Award of interest where any claim is allowed** : Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

9.1. In the case of **Kamla & Ors., v. Rajasthan State Road Transport Corporation reported in 1993 ACJ 958**, wherein it has been held as under :-

> “4. A bare reading of the above-said provision shows that the interest can be awarded on any claim followed by Motor Accidents Claims Tribunal. It is not disputed before us that while directing the respondent to pay a sum of Rs.25,000=00 as the amount of statutory liability, the Tribunal has allowed the claim of the appellants in this respect under the Act and that as such Section 171 of the Act would be applicable to such claim also and interest can be granted by the Tribunal on such amount as well.”

10. To that extent the award of the Tribunal is required to be modified. Hence, it is directed that the respondent - insurance Company shall satisfy the entire award including the additional amount of Rs. 14,000=00 together with proportionate costs and interest at the rate of 12% per annum from the date of the application till realization. Thus, the appeal is partly allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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